

1 MICHAEL C. MILLS, ESQ.
Nevada Bar No. 003534
2 MICAH MTATABIKWA-WALKER, ESQ.
Nevada Bar No. 013731
3 BAUMAN LOEWE WITT & MAXWELL
3650 N. Rancho Dr., Ste. 114
4 Las Vegas, NV 89130
Phone: 702-240-6060
5 Fax: 702-240-4267
Email: mmills@blwmlawfirm.com
6 Email: mwalker@blwmlawfirm.com

7 Attorneys for Defendant,
Bodega Latina Corporation, dba El Super

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**
11

12 MARGARITA HUERTA,

CASE NO:

13
14 Plaintiff,

15
16 vs.

17
18 BODEGA LATINA CORPORATION d/b/a
EL SUPER; DOES I-X, inclusive, and ROE
19 CORPORATIONS I-X, inclusive,
20

21 Defendants.
22

23 **NOTICE OF REMOVAL**

24 To: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA
25 Defendant, Bodega Latina Corporation, dba El Super, hereby notice the removal
26 of this action to the United States District Court and, in support thereof, states as
27 follows:
28

1 1. On or about February 13, 2017, Plaintiff commenced an action in the
2 Eighth Judicial District Court, Clark County, Nevada, entitled *Margarita Huerta v.*
3 *Bodega Latina Corporation, dba El Super*, Case No. A-17-750960-C. A copy is
4 attached as Exhibit A. She claims injury falling in Defendant's grocery store.

5 2. In the Amended Complaint at ¶1, Plaintiff alleges that she is a resident of
6 Clark County, Nevada.

7 3. Defendant Bodega Latina Corporation is a Delaware Corporation with its
8 headquarters in Paramount, California.

9 4. Service of Summons and Complaint upon Defendant Bodega Latina
10 Corporation, dba El Super was made by personal service on February 21, 2017. A
11 copy is attached as Exhibit B.

12 5. On March 6, 2017, Defendant Bodega Latina Corporation answered the
13 Complaint. A copy is attached as Exhibit C.

14 6. On March 6, 2017, Defendant Bodega Latina Corporation filed a Demand
15 for Jury Trial. A copy is attached as Exhibit D.

16 7. On March 6, 2017, Defendant Bodega Latina Corporation filed a
17 Corporate Disclosure Statement. A copy is attached as Exhibit E.

18 8. On April 20, 2017, R. Scott Rasmussen, Esq. was appointed arbitrator.

19 9. On June 2, 2017, arbitrator Rasmussen issued a Notice to Appear for
20 Arbitration Hearing.

21 10. No further proceedings have been had in this matter in the Eighth Judicial
22 District Court, Clark County, Nevada.

23 11. This Court has original jurisdiction over the subject matter of this action
24 pursuant to 28 U.S.C. §1332. Further, this matter is one that may be removed to this
25 Court pursuant to 28 U.S.C. §1441 because it is a civil action that is between citizens of
26 different states and in which the amount in controversy exceeds \$75,000, exclusive of
27 interest and costs.
28

12. DOES I-V and ROE CORPORATIONS I-V are named and sued fictitiously and their citizenship is disregarded as a matter of law for purposes of removal on grounds of diversity jurisdiction.

13. There is now complete diversity between Plaintiff and Defendant Bodega Latina Corporation.

14. Plaintiff's Complaint alleges claims for Negligence following a fall in Defendant's grocery store.

15. In her Complaint, Plaintiff prays for recovery of general damages in an amount to be proven at the time of trial, wage lost in an amount to be proven at the time of trial, special damages in excess of \$15,000.00; attorney's fees and costs, and for such other and further relief as the Court deems just and proper.

16. On June 20, 2017, Plaintiff served her Initial Disclosure of Witnesses and Exhibits, in which she included her first Computation of Damages which demonstrates her past medical special damages as follows.

PROVIDER	AMOUNT
American Medical Response	989.17
North Vista Hospital	8,855.92
Sunrise Hospital	6,829.00
Desert Springs Hospital	4,513.00
Nader H. Behesti II	378.00
Bradley S. Walker	102.00
GRAND TOTAL	\$21,667.09

17. Her post-incident emergency room care was provided at North Vista Hospital.

18. She later presented to Sunrise Hospital Emergency Room complaining of ankle swelling and pain. She was released with

XR ANKLE LEFT AP LAT W/ PAIN

PROCEDURE: Left ankle x-rays 3 views

DATE: 8/9/2015 8:06 PM

COMPARISON: None

CLINICAL HISTORY: Pain

CPT CODE: 73610

TECHNIQUE: A:P, lateral and oblique views were obtained of the left ankle.

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1 **FINDINGS:** The bony structures all appear to be intact without evidence of
2 fractures or dislocations. The soft tissues demonstrate no acute pathology.
There is a flattened plantar arch.

3 **IMPRESSION:**

No fracture identified or other acute pathology is seen.

4 19. Five days later she presented at Desert Springs Hospital where she was
5 diagnosed with a fracture of the talar neck of her ankle. The radiologist report reads:

6 **DSH RADIOLOGY**

7 **XR UNILATERAL ANKLE**

8 **HISTORY:** Pain. Rule out infection

9 **COMPARISON:** No prior

10 **TECHNIQUE:** Left ankle. 3 views.

11 **FINDINGS:** Bone mineralization is decreased. There is foreshortening of
12 the distance between the talar dome and the navicular on the lateral view.
Chronic degenerative changes in the subtalar joints. Generalized soft
tissue swelling.

13 **IMPRESSION:**

14 Generalized osteopenia. Findings: in the hind foot suggestive of
15 neuropathic / Charcot joint. A chronic impacted talar neck fracture is
16 suspected.

17 20. The doctors at Desert Springs Hospital discharged her wearing an air
18 walker boot and told to follow up with an orthopedic surgeon.

19 21. According to Plaintiff's Answers to Interrogatories, when asked to state the
20 injuries she suffered in the incident she says:

21 **INTERROGATORY NO.3:**

22 If you claim to have suffered personal injuries in the incident mentioned in
23 the Complaint, state all such injuries or ailments and symptoms
24 experienced by you.

25 **ANSWER NO. 3:**

26 I suffered a left leg fracture which caused the need for surgery. I am
27 currently scheduled for another surgery. Dr. Casey Burchill performed the
28 first surgery and is going to perform the second surgery. I also sustained
injuries to my head, my neck, my chest and my hands when I fell.

Exhibit F

22. Plaintiff's Initial Production of Witnesses and Documents does not identify
Dr. Burchill as a witness. The records produced with that Disclosure do not include any
records provided by Dr. Burchill. The Initial Computation of Damages does not include
any medical bills from Dr. Burchill. Exhibit G.

23. Plaintiff's Disclosure included photos of her porting a cast following
surgical care at the podiatrist Dr. Burchill.

24. Thus, based on the allegations in the complaint and Plaintiff's Initial Early Case Conference and List of Witnesses and Disclosures dated June 20, 2017, the value of the amount in controversy exceeds \$75,000.00.


25. More than 30 days have passed since notice of lawsuit was served. However, prior to litigation, Plaintiff did not make Defendant aware of the value of the Plaintiff's claim nor did she make any demand. The June 20, 2017 Initial Disclosure of Witnesses and Documents included the first records of care Defendant has received regarding this claim.

26. A true and correct copy of this Notice of Removal is being filed on this date with the Clerk of the Eighth Judicial District Court, Clark County, Nevada.

27. Based on the foregoing, Defendant Bodega Latina Corporation, hereby removes the above-referenced action now pending in the Eighth Judicial District Court, in and for the County of Clark, as Case No. A-17-750960-C to this Court.

Dated this 11th day of July 2017.

BAUMAN LOEWE WITT & MAXWELL, PLLC.



MICHAEL C. MILLS, ESQ.

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Nevada Bar No. 013731

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Las Vegas, NV 89130

Phone: 702-240-6060

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Attorneys for Defendant,

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A Plaintiff's Complaint

B Summons and Service

C Defendant's Answer to Complaint

D Defendant's Demand for Jury Trial

E Defendant's Disclosure Statement

F Plaintiff's Answers to Interrogatories.

G Plaintiff's Initial Disclosure of Witnesses and Documents. (pleading only).

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